

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Doswell Limited Partnership

Docket No. ER05-1119-002

ORDER ON REHEARING

(Issued October 3, 2005)

1. Virginia Electric and Power Company (Dominion) seeks rehearing of the Commission's August 12, 2005 order issued in this proceeding.¹ For the reasons discussed below, we will deny rehearing.

Background

2. On June 15, 2005, Doswell Limited Partnership (Doswell) filed a proposed rate schedule, specifying its revenue requirement for providing cost-based Reactive Support and Voltage Control from Generation Sources Service (Reactive Power Service) to PJM Interconnection, L.L.C. (PJM). Doswell stated in its filing that the Reactive Power Service at issue would be provided from facilities which it owns, located in Doswell, Virginia, including two 300 MW gas-fired, combined cycle units and a 170 MW gas-fired, combustion turbine generator (Doswell Facility).²

¹ See *Doswell Limited Partnership*, 112 FERC ¶ 61,182 (2005) (August 12 Order).

² The Doswell Facility interconnects with PJM's system along a transmission line owned by Dominion. Dominion's facilities became integrated into the PJM system as of May 1, 2005.

3. Dominion also has an interest in the Doswell Facility. These interests are addressed, in part, in two sets of agreements entered into between Dominion and Doswell concerning, respectively, Doswell's combined cycle units (collectively, the Combined Cycle Agreements) and Doswell's combustive turbine generator (Combustion Turbine Agreement). These agreements grant to Dominion certain energy and capacity rights. The Combined Cycle Agreements were filed with the Commission as Doswell's initial rate schedules in Docket No. ER90-80-000 and are due to expire on May 5, 2012.³ The Combustion Turbine Agreement was accepted by the Commission in Docket No. ER01-1182-000 and is due to expire December 31, 2005.⁴

4. Dominion protested Doswell's filing, claiming that under the Combined Cycle Agreements and the Combustion Turbine Agreement, Doswell had committed all of the electrical output of the Doswell Facility to Dominion, including the right to Reactive Power Service.

5. In the August 12 Order, we agreed with Dominion, in part. Specifically, we agreed that under the Combustion Turbine Agreement, Doswell is required to provide to Dominion the full electrical output of Doswell's combustion turbine unit, including Reactive Power. We found that this entitlement had been expressly set forth in the Combustion Turbine Agreement, at section 5.16, and that this entitlement had not otherwise been disputed by Doswell.

6. We also found, however, that Dominion's claimed entitlement to receive Reactive Power revenues under the Combined Cycle Agreements raised issues that we could not resolve on the record before us. We noted that while Dominion had claimed that under the Combined Cycle Agreement, it is entitled to purchase all of the electrical output attributable to Doswell's Combined Cycle units, including Reactive Power, Dominion had been unable to cite to any language in the agreements expressly stating that Dominion's entitlement to the energy and capacity output of the Doswell Facility *included* Reactive Power. We also found that while Doswell, for its part, had asserted

³ These agreements were subsequently consolidated into a single agreement in 1998, in Docket No. ER98-3606-000, and then further modified in 2001 in Docket No. ER01-3060-000.

⁴ Revisions to the Combustive Turbine Agreement were approved by the Commission in Docket Nos. ER01-1182-000 and ER01-3059-000.

that the Combined Cycle Agreements were not intended to include Reactive Power, Doswell had failed to adequately address the intent of the parties at the time these agreements were executed. We concluded that in order to develop a fuller and more complete record on these issues, hearing and settlement judge procedures would be appropriate.

Request For Rehearing

7. Dominion asserts as error the Commission's finding, in the August 12 Order, that the Combined Cycle Agreements do not expressly establish Dominion's interest in the Reactive Power revenues produced by Doswell's combined cycle units. Dominion argues, to the contrary, that this entitlement is expressly established in numerous provisions of the Combined Cycle Agreements which address Dominion's entitlement to control the operation of the combined cycle units and thus determine these units' Reactive Power capabilities.

8. First, Dominion relies on section 1.25 of the Combined Cycle Agreement, which defines the term "Dispatch," as follows:

The action of [Dominion] or its designee to commence, maintain, increase, decrease, or cease the delivery of Net Electrical Output in conjunction with the distribution of the total [Dominion] energy needs among available electrical energy sources for optimum system economy, with due consideration of the Operating Procedures, incremental [Dominion] generating costs, incremental [Dominion] energy and capacity purchase costs, incremental transmission losses, load flow considerations, the availability of other sources of electric energy and capacity given scheduled or forced outages, off-system commitments and opportunities for sale of electrical energy and capacity and other operational considerations, in each case, as reasonably determined by [Dominion] or its designee.

Dominion asserts that because the production of Reactive Power is a function of Dispatch and operating directives, Reactive Power is produced from the Doswell Facility's combined cycle units only by virtue of compliance with Dominion's Dispatch directives.

9. Dominion also relies on section 7 of the Combined Cycle Agreement. Specifically, Dominion argues that under section 7.6, Doswell is required to "control and operate the [combined cycle units] consistent with [Dominion's] Dispatch of the [Facility] and the Operating Procedures." Dominion adds that section 7.7 grants

Dominion the right “to Dispatch the [Facility] consistent with the Operating Procedures,” while section 7.4 provides that the Operating Procedures must include “Reactive Power support.”

10. Dominion also relies on the following provisions of the Combined Cycle Agreements, concerning Doswell’s operational obligations: section 6.2 (Doswell’s covenant that the Facility will be “operated and maintained in accordance with [prudent utility practices], including without limitation, synchronizing, voltage and reactive power control”); section 6.3 (obligating Doswell to operate the Facility “so as not to have a material adverse effect on [Dominion’s] voltage level or voltage waveform”); section 6.4 (Doswell’s covenant that the Facility will be operated “at the voltage levels determined consistent with the Operating Procedures); section 7.5(b) (requiring Doswell to maintain “records of real and reactive power production for each clock hour”); section 7.9 (requiring Doswell to “raise or lower production of energy to maintain safe and reliable load levels and voltages on [Dominion’s] transmission and/or distribution system”); and section 7.10 (requiring Doswell to cooperate with Dominion in establishing emergency plans that include “voltage reduction in order to effect load curtailment”).⁵

11. Dominion also asserts that the Commission erred in the August 12 Order in not rejecting Doswell’s filing as an impermissible collateral attack of the Commission orders authorizing Dominion to recover compensation for Reactive Power from the Doswell Facility.⁶ Dominion argues that in these prior proceedings, the Commission approved a settlement agreement intended, among other things, to resolve Dominion’s Schedule 2 rates for Reactive Power from generation facilities owned by Dominion and non-utility generators from whom Dominion had purchased rights to Reactive Power.

12. Finally, Dominion asserts that should the Commission deny its application for rehearing, it requests clarification that the issues set for hearing in the August 12 Order

⁵ Dominion’s cites to additional, conforming operational obligations set forth in the parties’ Operating Procedures.

⁶ Dominion states that it was authorized in Docket No. OA96-52-000 and ER04-898-000 to recover this compensation from 1997 to April 30, 2005 under Schedule 2 of Dominion’s open access transmission tariff (OATT) and in Docket No. ER05-87-000, from May 1, 2005 to the present, under Schedule 2 of PJM’s OATT.

include the overall justness, reasonableness and lawfulness of the rates contained in Doswell's proposed rate schedule.

Discussion

13. We will deny rehearing of our decision to send the Combined Cycle Agreement to hearing. Unlike the Combustion Turbine Agreement, which expressly provided Dominion with Reactive Power, we cannot, on this record, summarily find that Dominion has the same rights under the Combined Cycle Agreements. Section 1.25, on which Dominion relies, simply establishes Dominion's right to dispatch the energy output of the combined cycle units, but does not expressly address the parties' competing claims to the Reactive Power revenues attributable to this supply of Reactive Power.

14. Nor can we conclude that the numerous provisions establishing Doswell's obligation to control and operate the combined cycle units consistent with Dominion's interests and/or at Dominion's direction (sections 6.2, 6.3, 6.4, 7.4, 7.5(b), 7.6, 7.9, and 7.10), expressly establishes Dominion's entitlement to Reactive Power revenues. For example, Doswell's obligation to operate and maintain its combined cycle units in accordance with prudent utility practices, pursuant to section 6.2 of the Combined Cycle Agreements, does not expressly address the allocation of Reactive Power revenues between the parties.

15. Similarly, under the Combined Cycle Agreements, at section 2.1, Dominion agreed to purchase the "Net Electrical Output" of the combined cycle units, a term defined at section 1.76 as the "electrical energy output" of the combined cycle units. In addition, under section 2.2, Dominion agreed to purchase the "Dependable Capacity" of the combined cycle units. Neither provision, however, expressly addresses Reactive Power.

16. Indeed, Doswell reads this agreement differently and contends that the parties did not intend to allocate Reactive Power revenue rights to Dominion. Because we cannot resolve this issue summarily based on the pleadings, we established settlement judge proceedings, and ultimately a hearing, if necessary, to allow both parties to advance their positions on the proper interpretation of this agreement.

17. Dominion further asserts that Doswell should not be permitted to file Reactive Power rates in this proceeding because this filing is a collateral attack on the Commission's acceptance of settlement agreements filed by Dominion in prior proceedings that included rates for Reactive Power attributable to the Doswell Facility.

Dominion asserts that Doswell's failure to protest these earlier filings precludes it from seeking Reactive Power rates in this proceeding.

18. Again, this is an issue the parties can consider at the hearing. Dominion cites no precedent in support of its contention that Doswell's failure to protest earlier settlements precludes it from raising this issue, and Doswell has not had an opportunity to address this argument. As a general matter, litigation of rate issues is not precluded by a prior Commission determination on the same subject, particularly when the issue has not been presented and addressed by the Commission.⁷ Therefore, this is an issue that must be decided at the hearing where both parties can present evidence on the meaning and interpretation of actions taken in prior filings.

19. Finally, we will grant Dominion's request for clarification to the extent that the hearing can examine all issues raised by the filing to recover Reactive Power revenues. The August 12 Order provided that the hearing would be "held concerning the justness and reasonableness of the proposed rate schedule" governing the Combined Cycle Units.⁸ The parties are free to explore all aspects of this rate schedule.

⁷ See *Tagg Bros. v. Moorhead*, 280 U.S. 420, 445 (1930)(Brandeis, J.) (a rate order is not res judicata, every rate order may be succeeded by another); *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286 (D.C. Cir. 2000) (reversing the Commission for asserting issue preclusion unless changed circumstances could be shown); *Texas Eastern Transmission Corporation*, 893 F.2d 767, 774 (5th Cir. 1990) (finding that a rate is reasonable in one proceeding does not foreclose contrary finding in subsequent proceeding); *Transcontinental Gas Pipe Line Corporation*, 85 F.E.R.C. ¶ 61,357 (1998) (declining to preclude relitigation of an issue that could have, but was not raised in another proceeding); *Utah Power & Light Company*, 27 FERC P61,258, at 61,485 (1984) (res judicata does not bar party from seeking reconsideration of whether to roll-in rates in a second rate case).

⁸ 112 FERC ¶ 61,182, at P 16 and Ordering Paragraph C.

The Commission orders:

Dominion's request for rehearing and clarification of the August 12 Order are hereby resolved, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.